

BRIAN D. SHAPIRO

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Trustee in Bankruptcy
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**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA**

In re

ARIEL VERA-CASTILLO
PATRICIA VERA-CASTILLO,

Debtor(s).

Case No. 18-12348 ABL

Chapter 7

Hearing Date: OST REQUESTED

Hearing Time: OST REQUESTED

**MOTION TO (1) SELL REAL PROPERTY LOCATED AT 6625 BILLS WAY, LAS
VEGAS, NV 89107 SUBJECT TO LENDER SHORT SALE APPROVAL; (2)
AUTHORIZE PAYMENT OF REALTOR COMMISSION; (3) AUTHORIZE
DISBURSEMENT OF SALE PROCEEDS**

Brian D. Shapiro, Trustee respectfully submits his motion to sell real property upon receipt of lender approval; (2) authorize payment of realtor commission and (3) authorize the disbursement of sale proceeds. This motion is based upon the attached points and authorities and any oral argument that this Court may permit.

DATED: November 6, 2018


BRIAN D. SHAPIRO, TRUSTEE

MEMORANDUM OF POINTS AND AUTHORITIES

I. Introduction

An asset of the bankruptcy consists of real property located at 6625 Bills Way, Las Vegas, NV 89107 ("Real Property"). The Trustee is seeking to sell the Real Property upon receipt of lender short sale approval.

The Trustee is also seeking to authorize payment of a realtor commission, payable to the Broker, who is entitled to a commission not to exceed 6%, which may be contractually split between the agent for the seller and the agent for the buyer. Lastly, the Trustee is seeking authority for the respective Title Company to pay all costs of closing from the Settlement Statement, including but not limited to, the bankruptcy release fee payable to the Estate in the amount of \$5,500.00, or 6% of the purchase price for properties, whichever is greater.

II. Facts

1. On April 26, 2018, the Debtors filed their Chapter 7 Bankruptcy Petition and Schedules ("Schedules"). See, Declaration of Brian D. Shapiro in Support and Docket No. 1.
2. Brian D. Shapiro was appointed as Trustee. Id.
3. One of the assets of the Debtors was real property located at 6625 Bills Way, Las Vegas, NV 89107 ("Real Property"). Id.
4. The Debtors valued the Real Property at \$234,461.00. Id. A copy of schedule A of the Debtors' Schedules is attached to the Declaration of Brian D. Shapiro as Exhibit 1.
5. Pursuant to the Debtors' Schedules, Ocwen Loan Servicing holds the first deed of trust in the amount of \$198,030.00 and SRP 2012-4, LLC holds the second deed of trust in

1 the amount of \$67,732.47. Id. A copy of schedule D of the Debtors' Schedules is
2 attached to the Declaration of Brian D. Shapiro as Exhibit 2.

3 6. Pursuant to the preliminary title report, the original first deed of trust holder was
4 Mortgage Electronic Registration Systems, Inc. as nominee for ResMAE Mortgage
5 Corporation. A substitution of trustee appointed Quality Loan Service Corporation as
6 substituted trustee. Id. A copy of the preliminary title report is attached to the
7 Declaration of Brian D. Shapiro as Exhibit 3.
8

9 7. The preliminary title report also shows the original second deed of trust holder was
10 Mortgage Electronic Registration Systems, Inc. as nominee for ResMAE Mortgage
11 Corporation. A substitution of trustee appointed Sables, LLC, a Nevada Limited
12 Liability Company as substituted trustee. Id. A copy of the preliminary title report is
13 attached to the Declaration of Brian D. Shapiro as Exhibit 3.
14

15 8. There are no other outstanding liens against the property. Id. A copy of the
16 preliminary title report is attached to the Declaration of Brian D. Shapiro as Exhibit 3.
17

18 9. On August 24, 2018, the Trustee obtained an order authorizing the employment of
19 Debbie Priebe, Elegant Properties ("Broker"). Id. A copy of the order is attached to
20 the Declaration of Brian D. Shapiro as Exhibit 4.

21 10. The sale of the Real Property is subject to the Estate receiving lender short sale
22 approval. No sale of the Real Property shall take place in the absence of lender short
23 sale approval. The Trustee shall comply with any and all conditions contained in the
24 lender short sale approval. The proposed purchase price is \$195,500.00.
25

26 11. At the time of closing, the proceeds of the sale of the Real Property shall be paid as
27 follows (See Declaration of Brian D. Shapiro):
28

- a. All costs and expenses as stated in Purchase Agreement, including the amount consented to by the Secured Creditor.
- b. Realtor commission not to exceed 6% of gross proceeds, which may be contractually split between Buyer and Seller Broker.
- c. All homeowner association dues and liens, sewer liens, utility liens and property taxes showing of record as due and payable pursuant to the preliminary title report, and the Settlement Statement, shall be paid.
- d. All costs associated with the sale and close of escrow, including but not limited to, title insurance fees, settlement fees, transfer tax, courier fees, eviction services fees and locksmith fees.
- e. Bankruptcy Release fee payable to Brian D. Shapiro, Trustee in the amount of \$5,500.00, or 6% of the purchase price for properties, whichever is greater.

12. It is in the best interest of the creditors and the Bankruptcy Estate to conclude the sale as expeditiously as possible. Accordingly, the Trustee requests this Court to waive the provisions of Bankruptcy Rule 6004(h) and provide that any order entered on the Sale Motion take effect immediately upon entry rather than be stayed until the expiration of 14 days after entry of the Sale order.

III. LEGAL ARGUMENT

Property of the estate can be sold free and clear of liens under five (5) conditions. See, 11 U.S.C. § 363(f). Section 363(f) of the Bankruptcy Code is written in the disjunctive; thus satisfaction of any one of the five conditions is sufficient to sell the property free and clear of liens. See, Citicorp Mortgage, Inc. v. Brooks (In re Ex-Cel Concrete Co.), 178 B.R. 198, 203 n. 7 (B.A.P.

9th Cir. 1995).

First, pursuant to Section 363(f)(2) of the Bankruptcy Code, the sale of the Real Property is subject to the Estate receiving written short sale consent from Ocwen Loan Servicing and SN Servicing Corporation, or the current mortgage servicer approving the short sale of the Real Property pursuant to terms and conditions to be contained therein. The Trustee shall comply with all conditions contained in the lender short sale approval.

A certificate of service has been filed contemporaneously with this motion, which indicated that service was sent to all parties on the creditor's matrix, and counsel to secured lienholders pursuant to the Order Terminating Automatic Stay. Notice of sale is based upon Bankruptcy Rule 2002, 6004 and 9014. Notice has been given to all known and potential parties in interest.

IV. Conclusion

The Trustee requests that the Court order as follows:

1. Authorize and approve the sale of the Real Property subject to the terms and conditions contained herein, in addition to the terms and conditions to be contained in the Lender short sale approval.
2. Authorize the payment of liens against the Real Property, realtor commission, costs of closing, and Bankruptcy Release Fee.
3. Authorize the Trustee to sign any and all documents necessary to consummate the sale to Buyer.
4. Grant the Trustee such other and further relief as is just and proper.

DATED: November 15, 2018


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